

REMARKS

The Office has required restriction in the present application as follows:

Group I: Claims 1-40 and 52-114, drawn to a cosmetic article; and

Group II: Claims 41-51, drawn to a method of making a cosmetic article.

In addition, there is a requirement to elect one species from each of:

- A. Claims 52-81;
- B. Claims 82-94;
- C. Claims 95-102;
- D. Claims 103-104;
- E. Claims 105-113; and
- F. Claim 114.

Applicants elect with traverse, Group I, Claims 1-40 and 52-114, drawn to a cosmetic article and Claims 103 and 104 as the species.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct. The burden of proof is on the Office to provide reasons and/or examples to support any conclusion with regard to patentable distinctness. MPEP §803.

Applicants respectfully traverse the Restriction Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups or shown that a burden exists in searching all the claims.

Further, Applicants respectfully traverse the Restriction Requirement on the grounds that the Office has not shown that a burden exist in searching all of the claims.

Applicants respectfully traverse the Election of Species Requirement on the grounds that the Office has not provided any reasons, whatsoever, to support the conclusion of patentable distinctness. Rather, the Office has merely stated a conclusion.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper there must be a patentable difference between the species as claimed. MPEP §808.01(a). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

With respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Furthermore, Applicants request that upon finding that the elected claims are allowable, the corresponding non-elected process claims be rejoined (MPEP §821.04).

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction and Election of Species Requirement. Withdrawal of the Restriction and Election of Species Requirement is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Richard L. Treanor, Ph.D.
Attorney of Record
Registration No. 36,379

Daniel J. Pereira, Ph.D.
Registration No. 45,518

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
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